IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WA.No. 1824 of 2006()

AGAINST THE JUDGEMENT IN WPC.11314/2005
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APPELLANT: 3RD RESPONDENT:

THE CHAIRMAN AND MANAGING DIRECTOR,
FATHIMA HOSPITAL, BANK ROAD, CALICUT.

BY ADV. SRI.ANTONY DOMINIC
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

RESPONDENTS:
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1. THE INDUSTRIAL TRIBUNAL,
KOZHIKODE REP. BY THE STATE.

2. THE GENERAL SECRETARY,
KOZHIKODE DISTRICT PRIVATE HOSPITAL
AND MEDICAL SHOP WORKERS UNION (CITU)
YMCA CROSS ROAD, KOZHIKODE.

3. K. PREMRAJ, MEKKANHIRATT HOUSE,
ERAMALA P.O., VADAKKRA.

R2 BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY
R3 SRI.K.PREMARAJ (PARTY-IN-PERSON)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 12/12/2006, ALONG WITH WA NO. 2334 OF 2006
THE COURT ON 21/12/2006 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

Writ Appeal Nos 1824 and 2334 of 2006

Dated: 21st December, 2006

JUDGMENT

Radhakrishnan, J.

When a Union espouses the cause of all workmen under Section 2 (k) of the Industrial Disputes Act and a settlement has been arrived at on behalf of all the workmen, can an individual workman raise an industrial dispute under Section 2A in his individual capacity, is the question that has come up for consideration in these cases.

2. Third respondent in W.A. No 1824 of 2006 was working as Maintenance Supervisor in the appellant's hospital. He was member of the second respondent Union. Dispute arose between the Management and the Union concerning the denial of employment to forty workers. Dispute was espoused by the Union and was ultimately referred to the first respondent Tribunal for adjudication. The issue referred for adjudication by the Government as per G.O.

(Rt) No 1093/96/LBR dated 15.4.1996 is extracted below:

> "Whether alleged denial of employment to the following workmen is justifiable? If not the reliefs which the workmen are entitled to?"

The Tribunal passed an award on 4.3.1998 in I.D. No 9 of 1996 partly accepting the claims of the Union and granted consequential reliefs. Aggrieved by the same, Management filed O.P.No 21835 of 1999 challenging the award. Learned single judge of this court as per judgment dated 7.3.2002 set aside the award and remanded the matter back to the Tribunal for fresh enquiry and disposal. Matter again came up for consideration before the Tribunal. Dispute was renumbered as I.D. No 3 of 2003. During the pendency of the adjudication proceedings, a settlement was reached between the Management and the Union and a joint statement was filed to pass an award in terms of the settlement. Award was passed by the Tribunal on 16.10.2003 stating as follows:

> "Pursuant to the above the matter was taken back to file and issued notice to the parties. In response to the notice, both sides have appeared through their counsel. When the case was called on 16.10.2003, the parties have submitted a joint statement setting out that the dispute has been settled out of court on 15.10.2003 and praying for passing a no

> dispute award. A copy of the memorandum of settlement arrived at on 15.10.2003 is also submitted before me. I have gone through the terms of the settlement and in my view, the terms are fair and amicable. Therefore, I am inclined to pass a no dispute award in the matter."

Consequently the order was passed by the Industrial Tribunal holding that the dispute has been settled out of court and it was recorded that no industrial dispute subsisted between the parties warranting adjudication. Later, the workman filed C.M.P. No 16 of 2003 before the Tribunal to get himself impleaded in the dispute which was dismissed by the Tribunal by order dated 25.11.2003. Aggrieved by the said order, the workman filed W.P.C. No 32011 of 2003 before this court. Learned single judge of this court disposed of the writ petition on 4.2.2005 stating that if the workman is aggrieved and if so advised, he has to challenge the award. Without prejudice to such liberty the writ petition was closed. It was also ordered that the benefits flowing out of the award be released to the petitioner on his presenting a copy of the judgment before the Management. Workman then preferred W.P.C. No 11314 of 2005 before this court seeking a direction to the Industrial Tribunal to reopen I.D. No 3/2003 or remit the matter to the Industrial Tribunal permitting the workman

to adduce evidence and also for other consequential reliefs. Learned single judge disposed of the writ petition holding that the workman being an employee terminated from service has got a right to raise an industrial dispute under Section 2A of the Act even if he is not supported by other workmen. Taking that view, learned single judge repelled the challenge against the award passed by the Tribunal. It was also ordered that it is open to the workman to raise an industrial dispute against the termination of his service. It was also held that the workman is entitled to get an amount of Rs 44,000/- as per the settlement based on which the award was passed.

3. Counsel appearing for the Management, Sri Antony Dominic, and the Union Sri N. Reghuraj submitted that learned single judge was not justified in holding that the workman has got a right to raise an industrial dispute under Section 2A of the Act. Counsel also submitted that learned single judge has committed an error in holding that the Tribunal has made an unnecessary observation that the terms of the settlement was fair and reasonable. Counsel for the Union submitted that after holding that the settlement was not fair and reasonable, learned judge was not justified in holding that the workman is entitled to get Rs 44,400/- as per the settlement.

Counsel for the Management in support of the contention placed considerable reliance on the decisions of the apex court in Workmen of Indian Express Newspaper Pvt Ltd v. Management (1961) 2 L.L.J. 436) and K.C.P. Limited v. The Presiding Officer and others (1997) 1 L.L.J. 308).

4. Third respondent appeared in person and submitted that there is no illegality in the finding rendered by the learned judge. The third respondent also submitted that the terms of the settlement were not fair and reasonable and he is not governed by the settlement arrived at by the Union and the Management. Further he also stated that he had filed an application before the Tribunal for contesting the matter. Reference was also made to the decision of this court in Framatone Connectors O/E/N Ltd v. Framatone Connectors O/E./N Workers Union (2002 (3) KLT 583) and and of the apex court K.C.P. Ltd v. Presiding Officer and othes (AIR 1997 SC 2334).

5. Sri N. Reghuraj, counsel appearing for the Union, the second respondent in W.A.No 1824 of 2006 and the appellant in W.A. No 2334 of 2006, submitted that the Union is willing to comply with the award passed by the Tribunal and that the Union would disburse the amount to the workman as and when a request is made

by him. Counsel submitted that amounts were already disbursed to rest of the workmen. Counsel attacked the finding with regard to the right to raise an industrial dispute under Section 2A of the Act.

6. The facts would clearly indicate that the industrial dispute was raised by the Union on behalf of forty workers which included third respondent as well. It was an industrial dispute as defined in Section 2 (k) of the Act raised by the Union on behalf of its members. During the pendency of the dispute ;before the Industrial Tribunal the Union and the management held direct negotiations and an amicable settlement was arrived at on 15.10.2003. In view of ;the settlement Union agreed to withdraw the industrial dispute and agreed to file a statement before the Tribunal to that effect. Settlement was arrived at not in the course of conciliation proceedings but by direct negotiation between the management and the Union representing the workers for whose behalf the Union had raised an industrial dispute under section 2 (k) of the Act. Under such circumstances the workman would be ordinarily bound by the settlement entered into by their representative Union with the management unless the settlement is ex facie unfair, unjust and malafide. No such case was even alleged or made out by the workmen. On the contrary all the

workmen accepted the settlement except the third respondent. We have gone through the award passed by the Industrial Tribunal on 6.10.2003 and also the memorandum of settlement arrived at on 15.10.2003 which has been appended to the award. We are not reiterating the terms of the settlement which have already been narrated in Ext. P6 which were found to be fair and just by the Tribunal. We have also perused the terms of settlement, which, in our view, are fair and just.

7. We may in this connection refer to the decision of the apex court in Ram Prasad Vishwakarma v. The Chirman, Industrial Tribunal (1961 (1) LLJ 504) where three Judges Bench of the apex court had considered the effect of a settlement entered into by the Union of workmen which had espoused the cause of its members by raising an industrial dispute under Section 2 (k) of the Act and the further question whether an individual workman had any independent locus standi in proceedings before the reference court. The apex court rejecting the contention raised on behalf of the individual workman held that the concerned workman was not entitled to separate representation when already represented by the Secretary of the Union which espoused his cause. The court also held that a

dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2 (k) of the Act unless it is taken up by a Union of workmen or by a considerable number of workmen. The court held that when an individual workman becomes a party to a dispute under the Act he is a party, not independently of the Union which has espoused his cause. It was further observed that although no general rule can be laid down in the matter, the ordinary rule should be that representation by an officer of the trade Union should continue throughout the proceedings in the absence of exceptional circumstances justifying other representation of the workman concerned.

8. The apex court in K.C.P. Ltd's case, supra noticed that the decision in Ram Prasad Vishwakarma's case was rendered prior to the insertion of Section 2-A in the Act by which individual workmen were also given a right to raise industrial dispute in case of discharge, dismissal or retrenchment or otherwise termination of service. Taking note of the entire legal position, the court held in that case that the industrial dispute pertaining to 29 dismissed workmen was raised by the Union under Section 2 (k) of the Act and there was no reference under Section 2-A of the Act so far as the

workmen are concerned. The court noticed that the industrial dispute referred in that case was the demand espoused by the workmen and raised by the Union under section 2 (k) of the Act. Further it was also noticed that after the reference was made to the Tribunal none of the parties did raise any individual case under Section 2A of the Act.

9. This is a case where the Union had raised the dispute under Section 2 (k) of the Act and no dispute was ever raised by the workmen under section 2A of the Act at any point of time and after reaching a settlement while reference under section 2 (k) was pending, the workman is not entitled to invoke Section 2A, and therefore bound by the settlement arrived at by the Union with the management which was found to be fair and just. Consequently, the finding of the learned judge that the workman could raise a dispute under Section 2A cannot be sustained. We are of the view, workman is bound by the settlement reached between the Union and the workmen which has been accepted by the Industrial Tribunal and which is binding on the workman in view of section 18(3) of the Act.

10. We therefore hold that when the Union espouses the cause of workmen under Section 2 (k) of the Act and a settlement

has been entered into on behalf of all the members of the Union with the management, an individual workman has no locus standi to raise an industrial dispute individually unless the settlement is ex facie unfair, unjust and malafide. In view of the above mentioned circumstances, we set aside the judgment of the learned single judge and allow these appeals. We hold that third respondent is bound by the award passed by the Industrial Tribunal in I.D. 3 of 2003 dated 16.10.2003.

SD/-
(K.S. RADHAKRISHNAN, JUDGE)

SD/-
(M.N. KRISHNAN, JUDGE)

21/12/2006
en/

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